Written by **Bob Adelmann** on January 31, 2014

Supreme Court Hears Forced Unionism Case Brought by Illinois Mother

When Pam Harris responded to a knock on her door on a Sunday morning back in 2009, she was surprised at the presence of a union organizer asking her to join his union. When she pressed him for details, she learned that because she was accepting state Medicaid funds to help care for her disabled son, she was now considered a state "employee" for union-organizing purposes and was required to join his union.

Harris said no thanks and began organizing some other moms helping with their disabled children to force Illinois Governor Pat Quinn to rescind an executive order by him mandating her joining. When he refused, she went to court. Last week the Supreme Court heard oral arguments on her lawsuit, *Harris v. Quinn*.

Ten years ago then-Governor Rod Blagojevich passed a forced-unionism law applying to "personal assistants" working in homes, and 20,000 of them were forced to join the American Federation of State, County and Municipal Employees Council 31. Quinn's executive order extended that law to include another 4,500 individuals providing "disabilities services," one of whom is Pam Harris.

At issue is whether Illinois "may, consistent with the First and Fourteenth Amendments to the United States Constitution, compel personal care providers to accept and financially support a [union] as their exclusive representative." Also at issue, however, is a question vastly more important: whether the Supreme Court would be willing to take a hard look at its previous decision in *Abood v. Detroit Board of Education,* decided in 1977.

The court ruled in the *Abood* case that teachers who objected to a union shop — being forced to pay dues to a union that they opposed — could not claim First Amendment protection and had to pay dues anyway. At the time the court hedged its bet:

> We do not hold that a union cannot constitutionally spend funds for the expression of political views, on behalf of political candidates, or toward the advancement of other ideological causes not germane to its duties as collective bargaining representative. Rather, the Constitution requires only that such expenditures be financed from charges, dues, or assessments paid by employees who do not object to advancing those ideas and who are not coerced into doing so against their will by the threat of loss of governmental employment.

Translation: Teachers have to support the union with their dues, but only to the extent that those dues support legitimate union activities from which they allegedly benefit, and not when dues are spent promoting union ideology.

For nearly 37 years that ruling has informed efforts and supported legislation in a dozen states that have enacted rules such as those in Illinois. But when oral arguments were heard last week, it was clear

that plaintiffs were willing to press against the prior court finding, and at least some of the justices were willing to listen.

Just days before those arguments were heard, Lyle Denniston, writing for the SCOTUSblog, asked rhetorically if the *Abood* decision might be reversed, thanks to Harris. He noted that Harris' suit had had tough sledding as it wound its way up to the Supreme Court, with lower courts holding that, under *Abood*, Illinois was free to compel Harris to comply with Quinn's executive order. Nevertheless, back in October the Supreme Court surprisingly agreed to hear the case.

In the plaintiffs' case, wrote Denniston, they claimed that the *Abood* decision had morphed from a single case "into a government interest so compelling that it could trump public employees' First Amendment right to free association." And that the court never said that in *Abood*, and never intended it, that the court "never acknowledged that transformation." Put another way, according to Andrew Grossman, one of the lawyers at Cato presenting a brief supporting Harris, *Abood* has allowed public workers' rights to be compromised:

> Public workers First Amendment rights of expression and association are compromised when those workers are forced not only to be represented by a union, but also to pay for speech with which they disagree.…
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> The Supreme Court should vindicate the rights of home-care workers to be free from coerced association, to be free from supporting speech with which they disagree, and to petition the government in their own voices rather than through the unreliable and conflicted intermediary of a labor union.…
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> States like Illinois have no legitimate or compelling interest in forcing home-care workers to submit to exclusive representation by a labor union and be forced to pay for the privilege.

That the court was looking askance at the state's defense of the statute became clear about 20 minutes into oral arguments when Justice Samuel Alito asked defense counsel:

> Do you think that the specific factual background of what occurred here [in Illinois] provides a basis for skepticism about Illinois's reason for adopting this?
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> Defense Counsel: I don't think so. When the legislation was enacted, it was enacted with a very large bipartisan margin, and I just don't think it would be appropriate in the context of the government as manager of its own operations to look behind and try to consider motive. This is a choice that many —
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> Alito: I thought the situation was that Governor Blagojevich got a huge campaign contribution from the union and virtually as soon as he got into office he took out his pen and signed an executive order that had the effect of putting, what was it, $3.6 million into the union coffers?
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> Defense Counsel: Whatever happened —
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> Alito: That's the sequence; isn't that correct?

After that point, the court looked critically at the arguments presented by Harris. While it remains unlikely that the present court would reverse 37 years of precedent, no matter how wrongly originally decided it was and no matter how it has morphed over the years, at the very least it represents a resounding knock on the door of *Abood*, much like the knock on the door of Harris' home that Sunday morning back in 2009.

The risk is that if Harris is rejected, and *Abood* is affirmed once again, then everyone receiving any sort of government assistance — from SNAP to Social Security — could be considered an "employee" of the state and consequently be forced to join a union.

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